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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/303,632

05/03/1999

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D-7102

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7590

09/19/2008

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EXAMINER

EVANISKO, LESLIE J

ART UNIT

PAPER NUMBER

2854

MAIL DATE

DELIVERY MODE

09/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/303,632	<b>Applicant(s)</b> LEBEAU ET AL.	
	<b>Examiner</b> Leslie J. Evanisko	<b>Art Unit</b> 2854	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21,25-32,37,38,41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 27,30,31 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,25,26,28,29,32,37,41 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 6, 2008 has been entered.

### **Election/Restrictions**

2. Claims 27, 30-31, and 38 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 24, 2007.

### **Drawings**

3. The replacement sheets of drawings were received on December 20, 2006. These drawings are approved by the Examiner.

### **Claim Objections**

4. Claims 25, 28-29, 32, 37, 41, and 42 are objected to because of the following informalities:

With respect to claim 25, in line 3, it is suggested that the term "a" be deleted and replaced with --the-- since the bottom surface has been previously recited in claim 21.

With respect to claim 28, in line 4, it is suggested that the phrase "one side edge portions" be deleted and replaced with --one of said side edge portions-- to use less awkward language. Additionally, in line 6, it is suggested that the term "a" be deleted and replaced with --the-- since the bottom surface has been previously recited in claim 21.

With respect to claim 32, line 8, it is suggested that the term "an" (both occurrences) be deleted and replaced with --the-- since the operator was previously recited in line 3.

With respect to claim 41, lines 7-8, it is suggested that the term "an" (both occurrences) be deleted and replaced with --the-- since the operator was previously recited in line 3. Additionally, it is suggested that a comma be inserted after "keyboard" in line 12 to correct an obvious grammatical error.

Appropriate correction and/or clarification is required.

### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 21, 25-26, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaible et al. (US 5,3997,182) in view of the IBM Technical Disclosure Bulletin, June 1994, Vol. 37, Issue 6B, pages 125-126 (hereafter referred to as the IBM reference). Gaible et al. teach an individual transparent bag or "cover" comprising a pair of identical flat and entirely transparent planar sheets of uniform thickness pliable plastic film being fastened along at least a bottom edge so as to contact and protect the

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entire upper and bottom surfaces of a keyboard within the enclosure formed by the upper and lower sheet members. See Figure 2 and column 4, lines 34-38 of Gaible et al.

Note that although Gaible et al. do not necessarily teach the cover is used for covering a keyboard, note that the claim is drawn to the cover structure per se and not the combination of the cover and keyboard. Therefore, the claim language regarding how the cover is used is merely the intended use of the cover and has no patentable significance to the claims. Thus, Gaible et al. teach a “cover” including all of the structure as recited.

Furthermore, although Gaible et al. is silent with respect to whether it includes a package containing a plurality of such bags, the provision of a plurality of disposable items in a package is well known in the art as exemplified by commercially available packages of such disposable items as sandwich bags, trash bags, etc. Furthermore, the IBM reference teaches packs of individual disposable covers for covering handheld computer devices in the fourth paragraph on page 126. In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide a pack having a plurality of the bags of Gaible et al. to facilitate discarding and replacing the covers as they become soiled or damaged.

With respect to claim 25-26, note that Gaible et al. teach a sheet including an upper member and lower member formed as an envelope with only one elongated opening along a top edge portion so as to be capable of contacting and protecting the entire upper surface and lower surface of a keyboard as broadly recited.

With respect to claims 28 and 29, note that Gaible et al. teaches the sheet is comprised of two identical flat “members” that are broadly “fastened together” along

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each short side edge portion so as to be closed and along the elongated bottom edge portion with an opening formed along the elongated top edge portion that is capable of permit a keyboard to be inserted therein as recited. Although it is not clear whether the "cover" of Gaible et al. is formed by having two separate sheets that are heat sealed on three sides or by folding over a sheet to form two sheet members and then heat sealing just two sides, it is the Examiner's position that the structure of Gaible et al. reads of the claim language as recited since the end result is a cover comprised of two identical flat sheet members broadly "fastened together" along three edges so as to form an envelope to hold an object. However, in any event, even if Gaible et al. only teaches folding one sheet over on itself and heat sealing the two side edges and one could argue this structure doesn't meet the claim limitations recited, it is the Examiner's position that forming a bag-like structure by providing two identical sheets heat sealed along three edges is well known in the art. Therefore, Gaible et al. teaches or at least renders obvious the cover as recited.

8. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yanagisawa (US 5,872,527) in view of Adair (US 5,812,188). Yanagisawa teaches a keyboard and an individual disposable transparent cover 34, 34' for protecting the sterility of and preventing contaminations between dental or medical patients, the cover comprising a flat and entirely transparent planar sheet of pliable film of uniform thickness and a predetermined size in length and width for forming an envelope or enclosure (column 11, lines 36-37) for enclosing the entire upper and lower surfaces of the keyboard as recited. See Figures 9-10 and column 11, lines 21-67 in particular. Note

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that the keyboard of Yanagisawa is rectangular as shown in Figure 6 and therefore, it would appear that the sheet for enclosing the entire keyboard would also be rectangular with long top and bottom edges and short side edges forming an envelope as recited. Additionally note the disposable cover of Yanagisawa is broadly capable of being disposed of after each patient as recited. Furthermore, note that although Yanagisawa does not specifically state that the cover is a plastic film as recited, note that Adair teaches the use of flexible transparent materials such as polyurethane, polyolefins, and laminated plastic films for a covering for a keyboard in a sterile environment is well known in the art. See Figures 1 and 5 and column 5, lines 2-16 and column 6, lines 38-55. In view of this teaching, it would have been obvious to one of ordinary skill in the art to use a plastic film as taught by Adair for the flexible transparent film of cover of Yanagisawa as it would require simply the obvious selection of a known material based upon its known properties.

9. Claims 37, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yanagisawa (US 5,872,527) in view of Adair (US5,812,188) as applied to claim 32 above, and further in view of Gaible et al. (US 5,397,182).

With respect to claim 37, Yanagisawa as modified by Adair teach a rectangular keyboard and disposable transparent cover individually formed and having a predetermined size to enclose the keyboard (i.e., cover both the upper and bottom surface of the keyboard) for protecting the sterility of the keyboard and inhibiting any unintentional contact between the keyboard and fingers of a user while not impeding an operator's ability to manipulate the keyboard in an accurate and speedy manner. Note



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the previous comments with respect to claim 32. Although Yanagisawa is silent with respect to the particular details of the enclosure configuration, Gaible et al. teach a cover or enveloping structure including a sheet formed as an envelope with an elongated opening along one top edge portion while the bottom and side edges are closed to allow for insertion of a keyboard as broadly recited. Furthermore, the selection of particular side of the enclosure in which the opening is formed for insertion of the keyboard appears to involve simply a matter of design choice. Therefore, it would have been obvious to one of ordinary skill in the art to provide the cover member of Yanagisawa as modified by Adair to be configured as an envelope with an elongated opening along any desired edge, such as a top edge portion, while the other edges are closed as taught by Gaible et al. to a flexible transparent cover for use in a sterile environment with an opening for allowing insertion of the keyboard inside the enclosure.

With respect to claims 41 and 42, Yanagisawa as modified by Adair do not teach the cover including two identical flat plastic sheets fastened together along the various edges as recited. However, note that fastening two identical flat and entirely transparent sheets of pliable plastic film together along three edges to form an enclosure or “cover” member for enclosing an object is well known in the art, as exemplified by Gaible et al. in Figure 2 and column 4, lines 34-38. Additional attention is invited to the previous comments with respect to claims 28-29 in particular. In view of this teaching, it would have been obvious to one of ordinary skill in the art to form the enclosure or “cover” of Yanagisawa as modified by Adair from two identical flat sheets fastened together along three edges as taught or rendered obvious by Gaible et al. to provide a simple, inexpensive, and easy-to-manufacture cover member to better protect the

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sterility of the keyboard by enclosing the keyboard to cover both the upper and bottom surfaces of the keyboard and to allow for easy removal of the keyboard.

### **Response to Arguments**

10. Applicant's arguments filed June 6, 2008 have been fully considered but they are not persuasive of any error in the above rejections.

In particular, with respect to claims 21, 25-26, and 28-29, applicant argues that Gaible et al. does not teach an entirely transparent planar sheet of pliable plastic film which has a uniform thickness throughout because the cover member of Gaible et al. includes interlocking strips and gripping ridges 260, 262 and thus fails to show a film of uniform thickness throughout. However, the Examiner disagrees with this argument. In particular, it is the Examiner's position that the cover of Gaible et al. includes two identical flat transparent sheets of pliable plastic film 32a, 32b as recited. As taught by Gaible et al. in column 4, lines 34-52, the two webs 228, 230 (which include the gripping ridges applicant refers to) are separate members that are attached to the ends of the two flat and transparent sheets of plastic film 32a, 32b. The Examiner points out that the claims are written in open terminology and therefore the additional features of the webs present in the "cover" of Gaible et al. does not negate the fact that Gaible et al. teaches two identical flat sheets as recited. Additionally applicant argues that Gaible et al. does not have two identical flat sheets since there is no mention that the bottom edge portion is heat sealed like the edges 33a, 33b. The Examiner disagrees. First, it is not clear from reading Gaible et al. exactly how the bottom edge is formed. Regardless, even if the bottom edge of Gaible et al. is not heat sealed as applicant contends, that does not mean

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that the sheet could not be comprised of two identical flat members of plastic film since a long sheet folded over on itself could broadly be considered to be a sheet formed of a pair of identical flat members fastened together along 3 edges as recited. Furthermore, in the event Gaible et al. could be considered to not meet the claim limitations as recited, it is the Examiner's position that forming bag-like structures for holding an object in which two identical members are provided and heat sealed along three edges is well known in the art. Therefore, Gaible et al. teach or render obvious the claimed cover as recited.

With respect to claims 32 and 37, applicant argues that Yanagisawa fails to teach the envelope as recited because Yanagisawa merely teaches the entire keyboard body may be covered to be enclosed, but does not show how this is achieved, which applicant contends may just be a result of "wrapping the keyboard in plastic wrap much like a sandwich." The Examiner disagrees with this argument. In particular, the Examiner points out that Yanagisawa does teach the concept of enveloping the entire keyboard to enclose it in column 11, lines 36-37. Although Yanagisawa is silent with respect to the exact details of the enveloping structure, the Examiner points out that since the keyboard of Yanagisawa is rectangular, even if the sheet is large enough to be folded over and thus "wrap the keyboard like a sandwich", the sheet of Yanagisawa would still meet the claim language of claim 32 as broadly recited.

With respect to claims 41 and 42, note the previous comments with respect to claims 21, 25-26, and 28-29, 32 and 37.

In view of the above reasoning, the Examiner is not persuaded of any error in the above rejections.

### **Conclusion**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Leslie J. Evanisko** whose telephone number is **(571) 272-2161**. The examiner can normally be reached on T-F 8:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on (571) 272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/Leslie J. Evanisko/*  
Leslie J. Evanisko  
Primary Examiner  
Art Unit 2854

lje  
September 13, 2008